IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1215 OF 2007
IN
SUIT NO.2555 OF 2003

H.D.F.C.Ltd. ..Plaintiff.

V/s.

Jayesh C. Doshi & Ors. ..Defendants.

Mr.Sanjay Udeshi for plaintiff.

Mr.Shashi Jain a/w U.Jain i/b. Naina de for defendant Nos. 1 and 2.

Ms.Mehrunnisa Sura i/b. Yusuf & Associates for defendant Nos. 3,4 and 5.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 22, 2007.

P.C. :

1. The plaintiffs by this Motion pray that they may be permitted to proceed under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in the light of notification dated 10th November, 2003, which includes the plaintiff’s institution to be covered by the provisions of the Act of 2002. The notification is appended to the Motion at Exh.C at page 15. There is no dispute in so far as the fact that the plaintiff’s institution is concerned is covered by Securitisation Act, 2002. In the circumstances, the

plaintiff is justified in relying on the decision of the Apex Court in the case of **Transcore V/s. Union of India & Anr. reported in (2007) 135 Comp Cas 1(SC).** Accordingly, the plaintiff will succeed in terms of prayer clauses (a), (b) and (d) which read thus:

> "(a) That this Hon'ble Court be pleased to permit the Plaintiffs to take recourse to one or more measures in exercise of their powers under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI,Act) for the purpose of enforcement of security interest created by Defendant No. 1,2 and 3 in favour of the Plaintiffs with respect to the Suit Flat i.e. secured asset; more particularly described in the Plaint.
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> (b) That the Hon'ble Court be pleased to direct the Court Receiver to continue in symbolic possession till such time the Authorised Officer of the Plaintiffs takes actual Physical possession of the suit flat/ secured asset more particularly described in the Plaint, under the SARFAESI Act.
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> (d) That the Court Receiver to stand discharged without passing account on the day on which the Authorised Officer of the Plaintiffs takes over actual physical possession of the suit flat / secured asset more particularly described in the Plaint, under the SARFAESI Act and the entire amount lying with the Court Receiver be transferred to the Plaintiff."

2. In so far as the payment of royalty is concerned, the defendant Nos.1 and 2 will be obliged to pay royalty to the Court Receiver till the Court Receiver hands over symbolic possession of the suit property to the authorised officer of the plaintiff.

. Ordered accordingly.